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9 **BEFORE THE**  
**BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. *2013-516*

13 **COLBY BROOK FELDMAN**  
14 **1457 Felspar Street**  
**San Diego, CA 92109**

**A C C U S A T I O N**

15 **Registered Nurse License No. 756262**

16 Respondent.

17  
18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her  
21 official capacity as the Executive Officer of the Board of Registered Nursing, Department of  
22 Consumer Affairs.

23 2. On or about July 27, 2009, the Board of Registered Nursing issued Registered Nurse  
24 License Number 756262 to Colby Brook Feldman (Respondent). The Registered Nurse License  
25 was in full force and effect at all times relevant to the charges brought herein and will expire on  
26 January 31, 2013, unless renewed.

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## JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2750 of the Code provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811(b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.

## STATUTORY PROVISIONS

6. Section 2761 of the Code states:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

"(a) Unprofessional conduct, which includes, but is not limited to, the following:

"(1) Incompetence, or gross negligence in carrying out usual certified or licensed nursing functions.

". . .

"(d) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violating of, or conspiring to violate any provision or term of this chapter [the Nursing Practice Act] or regulations adopted pursuant to it.

". . . ."

7. Section 2762 of the Code states:

"In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

". . .

"(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

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## REGULATORY PROVISIONS

8. California Code of Regulations, title 16, section 1442, states:

"As used in Section 2761 of the code, 'gross negligence' includes an extreme departure from the standard of care which, under similar circumstances, would have ordinarily been exercised by a competent registered nurse. Such an extreme departure means the repeated failure to provide nursing care as required or failure to provide care or to exercise ordinary precaution in a single situation which the nurse knew, or should have known, could have jeopardized the client's health or life."

9. California Code of Regulations, title 16, section 1443, states:

"As used in Section 2761 of the code, 'incompetence' means the lack of possession of or the failure to exercise that degree of learning, skill, care and experience ordinarily possessed and exercised by a competent registered nurse as described in Section 1443.5."

10. California Code of Regulations, title 16, section 1443.5 states:

"A registered nurse shall be considered to be competent when he/she consistently demonstrates the ability to transfer scientific knowledge from social, biological and physical sciences in applying the nursing process, as follows:

"(1) Formulates a nursing diagnosis through observation of the client's physical condition and behavior, and through interpretation of information obtained from the client and others, including the health team.

"(2) Formulates a care plan, in collaboration with the client, which ensures that direct and indirect nursing care services provide for the client's safety, comfort, hygiene, and protection, and for disease prevention and restorative measures.

"(3) Performs skills essential to the kind of nursing action to be taken, explains the health treatment to the client and family and teaches the client and family how to care for the client's health needs.

"(4) Delegates tasks to subordinates based on the legal scopes of practice of the subordinates and on the preparation and capability needed in the tasks to be delegated, and effectively supervises nursing care being given by subordinates.

"(5) Evaluates the effectiveness of the care plan through observation of the client's physical condition and behavior, signs and symptoms of illness, and reactions to treatment and through communication with the client and health team members, and modifies the plan as needed.

"(6) Acts as the client's advocate, as circumstances require, by initiating action to improve health care or to change decisions or activities which are against the interests or wishes of the client, and by giving the client the opportunity to make informed decisions about health care before it is provided."

## DRUGS

11. Concerta is primarily used to treat attention deficit disorder and attention deficit hyperactivity disorder. It is a Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision (d)(6), and a dangerous drug pursuant to section 4022.

12. Vicodin is a Schedule III controlled substance pursuant to Health and Safety Code section 11056, subdivision (e)(4), and a dangerous drug pursuant to Code section 4022.

13. Xanax is a brand name for alprazolam, a Schedule IV controlled substance pursuant to Health and Safety Code section 11057, subdivision (d)(1), and a dangerous drug pursuant to Code section 4022.

## COSTS

14. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case, with failure of the licentiate to comply subjecting the license to not being

renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

### FACTS

15. In 2009-2011, Respondent worked as a registered nurse at Scripps Mercy Hospital in San Diego (the Hospital). The Hospital had several personnel policies in effect during the time Respondent worked there. These policies required her to: abstain from working with alcohol, illegal drugs, or metabolites in her system; and abstain from being under the influence of prescription medication that impaired her ability to perform safely her duties. As for drugs obtained by a prescription or over the counter that could affect her ability to perform her job safely, Respondent was obligated under these policies to report her use of such drugs to the hospital staff to afford the Hospital the opportunity to determine if a plan could be created to allow her to work while using such drugs.

16. In December 2009, Respondent provided care for a patient on the 8th Floor in the Oncology Unit. The Hospital's policy for the 8th Floor included checking a patient's vital signs and turning the patient over every two hours. However, during her shift one night Respondent failed to check a patient's vital signs during her shift, which resulted in the delay of care for twelve hours, and failed to turn the patient over during her shift, and the patient developed a Stage II pressure ulcer.

17. On or about February 24, 2011, several hospital staff members saw Respondent behave in an erratic manner. Her eyes were glazed with pinpoint pupils. She appeared confused and slurred her words. She gave incoherent answers to questions by her coworkers. When hospital staff questioned Respondent about her behavior, she admitted that she had been consuming several drugs, like Concerta, Vicodin, and Xanax, and working after consuming these drugs. She also admitted that she had never reported her use of these drugs as required under the Hospital's standards and policies regarding prescription drugs.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct)**

3 18. Respondent is subject to disciplinary action under section 2761, subdivision (a) in  
4 that Respondent committed an act of unprofessional conduct. The circumstances, as set forth  
5 above in paragraphs 15-17, are incorporated herein by reference. Specifically, Respondent failed  
6 to follow the Hospital's protocol to report that she had obtained and was using prescription  
7 medications for her various medical conditions while working. Her failure to do so deprived the  
8 Hospital of the opportunity to assess her fitness for duty and any special circumstances or  
9 accommodations that could have reasonably been made.

10 **SECOND CAUSE FOR DISCIPLINE**

11 **(Unprofessional Conduct - Incompetence)**

12 19. Respondent is subject to disciplinary action under section 2761, subdivision (a)(1),  
13 for incompetence as defined in title 16, California Code of Regulations, sections 1443 and  
14 1443.5, in that Respondent lacked possession of or failed to exercise that degree of learning, skill,  
15 care and experience ordinarily possessed and exercised by a competent registered nurse. The  
16 circumstances, as set forth above in paragraphs 15-18, are incorporated herein by reference. Each  
17 of the following acts demonstrate Respondent's incompetence:

18 20. Respondent failed to check the vital signs of a patient during her shift, causing a  
19 twelve hour delay of the patient's care; and

20 21. Respondent failed to turn the patient during her shift, resulting in the worsening of the  
21 patient's condition, when Respondent was required to turn the patient over every two hours.

22 **THIRD CAUSE FOR DISCIPLINE**

23 **(Unprofessional Conduct - Gross Negligence)**

24 22. Respondent is subject to disciplinary action under section 2761, subdivision (a)(1),  
25 for gross negligence as defined in title 16, California Code of Regulations, section 1442 in that  
26 Respondent's conduct was an extreme departure from the standard of care which, under similar  
27 circumstances, would have ordinarily been exercised by a competent registered nurse. The  
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1 circumstances, as set forth above in paragraphs 15-21, are incorporated herein by reference. Each  
2 of the following acts demonstrate Respondent's gross negligence:

3 23. Respondent failed to check the vital signs of a patient during her shift, causing a  
4 twelve hour delay of the patient's care; and

5 24. Respondent failed to turn the patient during her shift, resulting in the worsening of the  
6 patient's condition, when Respondent was required to turn the patient over every two hours.

7 **FOURTH CAUSE FOR DISCIPLINE**

8 **(Unprofessional Conduct – Use of a Controlled Substance in a Dangerous Manner)**

9 25. Respondent is subject to disciplinary action under section 2761, subdivision (d), and  
10 section 2762, subdivision (b) in that Respondent used the controlled substances or dangerous  
11 drugs Concerta, Vicodin, or Xanax in a manner dangerous or injurious to herself or the public or  
12 to the extent it impaired her ability to practice safely as a registered nurse. The circumstances, as  
13 set forth above in paragraphs 15-24, are incorporated herein by reference.

14 **PRAYER**


15 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
16 and that following the hearing, the Board of Registered Nursing issue a decision:

17 1. Revoking or suspending Registered Nurse License Number 756262, issued to Colby  
18 Brook Feldman;

19 2. Ordering Colby Brook Feldman to pay the Board of Registered Nursing the  
20 reasonable costs of the investigation and enforcement of this case, pursuant to Business and  
21 Professions Code section 125.3;

22 3. Taking such other and further action as deemed necessary and proper.

23 DATED: December 24, 2012

24   
25 LOUISE R. BAILEY, M.Ed., RN  
26 Executive Officer  
27 Board of Registered Nursing  
28 Department of Consumer Affairs  
State of California  
Complainant

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